



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 58] नई दिल्ली, मंगलवार, दिसम्बर 23, 2003 / पौष 2, 1925
No. 58] NEW DELHI, TUESDAY, DECEMBER 23, 2003 / PAUSA 2, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 23rd December, 2003

I

BILL No. LXXVI OF 2003

A Bill further to amend the Chartered Accountants Act, 1949.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Chartered Accountants (Amendment) Act, 2003.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

38 of 1949.

2. In the Chartered Accountants Act, 1949 (hereinafter referred to as the principal Act), in section 2, in sub-section (1),—

Amendment
of section 2.

(i) after clause (a), the following clauses shall be inserted, namely:—

‘(aa) “Authority” means the Appellate Authority constituted under section 22A;

(aaa) “Board” means the Quality Review Board constituted under section 28A;’;

(ii) after clause (e), the following clause shall be inserted, namely:—

‘(ea) “notification” means a notification published in the Official Gazette;’;

(iii) after clause (h), the following clauses shall be inserted, namely:—

‘(ha) “specified” means specified by rules made by the Central Government under this Act;

(hb) “Tribunal” means a Tribunal established under sub-section (1) of section 10B;’.

Amendment
of section 4.

3. In section 4 of the principal Act, in sub-section (3), for the words “the prescribed fee, which shall not exceed rupees three hundred”, the words “such fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees three thousand” shall be substituted.

Amendment
of section 5.

4. In section 5 of the principal Act, in sub-section (3), for the words “the prescribed entrance fee, which shall not exceed rupees two hundred”, the words “such fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees five thousand” shall be substituted.

Amendment
of section 6.

5. In section 6 of the principal Act,—

(i) in sub-section (2), for the word “prescribed”, the words “determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees three thousand in any case” shall be substituted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.”.

Amendment
of section 9.

6. In section 9 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) The Council shall be composed of the following persons, namely:—

(a) not more than thirty persons elected in the specified manner by members of the Institute, from amongst the fellows of the Institute, and

(b) not more than ten persons nominated in the specified manner by the Central Government.

(3) No person holding an office of profit under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).”.

Substitution of
new sections
for section 10.

7. For section 10 of the principal Act, the following sections shall be substituted, namely:—

“10. (1) A member of the Council elected under clause (a) of sub-section (2) of section 9 shall be eligible for re-election but not for more than three consecutive terms.

(2) A member of the Council, who is or has been elected, as President under sub-section (1) of section 12, shall not be eligible for re-election as a member of the Council.

Re-election to
Council.

Settlement
of dispute
regarding
election.

10A. In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of the declaration of the result of the election to the Council which shall forward the same forthwith to the Central Government.

10B. (1) On receipt of any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other Members to decide such dispute and the decision of such Tribunal shall be final.

Establishment
of Tribunal.

(2) A person shall not be qualified for appointment,—

(a) as a Presiding Officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade I of the service for at least three years;

(b) as a Member unless he has been a member of the Council for at least one full term; and

(c) as a Member holding the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, remuneration and allowances shall be such as may be specified.

(4) The expenses of the Tribunal shall be borne by the Council.”

8. In section 12 of the principal Act, in sub-section (4), for the word “President” occurring at both the places, the words “President and the Vice-President” shall be substituted.

Amendment
of section 12.

9. In section 13 of the principal Act, in the proviso to sub-section (3), for the words “six months”, the words “one year” shall be substituted.

Amendment
of section 13.

10. In section 14 of the principal Act, in sub-section (1), for the words “three years”, the words “four years” shall be substituted.

Amendment
of section 14.

11. In section 16 of the principal Act, in sub-section (1), after clause (e), the following clause shall be inserted, namely:—

Amendment
of section 16.

“(f) approve the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute in such manner as may be specified.”

12. In section 17 of the principal Act,—

(a) in sub-section (1), clause (iii) shall be omitted;

Amendment
of section 17.

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Each of the Standing Committees shall consist of the President and the Vice-President *ex officio*, and minimum of three and maximum of five members of the Council elected by the Council, out of which one shall be the member nominated under clause (b) of sub-section (2) of section 9.”

13. In section 19 of the principal Act,—

(i) in sub-section (3), the words “on payment of such amount as may be prescribed” shall be inserted at the end;

Amendment
of section 19.

(ii) in sub-section (4), for the word “prescribed”, the words “determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees five thousand in any case” shall be substituted.

14. In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment
of section 20.

“(3) If the name of any member has been removed from the register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the register on payment of the arrears of determined annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council with the

prior approval of the Central Government, which shall not exceed rupees two thousand in any case.”.

15. For section 21 of the principal Act, the following sections shall be substituted, namely:—

Substitution
of new
sections for
section 21.

Disciplinary
Committee.

‘21. (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members of the Council elected by the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, education, economics, business, finance, accountancy or public administration:

Provided that the Council may constitute more regional Disciplinary Committees as and when it deems fit.

(2) The Disciplinary Committee in making the inquiry under the provisions of this Act shall follow such procedure and submit the report to the Council within such time as may be specified.

Appointment
of
Prosecution
Director.

21A. (1) The Council shall, by notification, appoint a Prosecution Director and such other employees for making inquiries in respect of any information or complaint received by it under the provisions of this Act.

(2) In order to make inquiries under the provisions of this Act, the Prosecution Director shall follow such procedures as may be specified.

Authority,
Council,
Disciplinary
Committee
and
Prosecution
Director to
have powers
of Civil
Court.

21B. For the purposes of an inquiry under the provision of this Act, the Authority, the Council, the Disciplinary Committee and the Prosecution Director shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Action by
Council on
Disciplinary
Committee
report.

21C. (1) On receipt of a report from the Disciplinary Committee, if the Council is satisfied that the member of the Institute is guilty of any professional or other misconduct, it shall record its findings accordingly and shall proceed in accordance with the provisions of section 21D.

(2) In case the Council is not satisfied with the report of the Disciplinary Committee and is of the opinion that it requires further inquiry, it may refer the report again to the Disciplinary Committee for such further inquiry as may be directed through an order of the Council.

(3) If the Council disagrees with the findings of the Disciplinary Committee, it may direct the Prosecution Director to make an appeal to the Authority.

Member to be
afforded
opportunity
of being
heard.

21D. Where the Council is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Schedule, it shall afford to the member a reasonable opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member; or

(b) remove the name of the member from the register permanently or for such period, as it thinks fit.

Explanation.—For the purposes of this section, “member of the Institute”

includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.’

16. In section 22 of the principal Act,—

(i) for the words “specified in any of the Schedules”, the words “mentioned in the Schedule or as may be specified” shall be substituted;

Amendment
of section 22.

(ii) the words “under sub-section (1) of section 21” shall be omitted.

17. For section 22A of the principal Act, the following sections shall be substituted, namely:—

Substitution
of new
sections for
section 22A.

“22A. (1) The Central Government shall, by notification, constitute an Appellate Authority consisting of—

Constitution
of Authority.

(a) a person who is, or has been, or is qualified to be a judge of a High Court, to be its Chairperson;

(b) two members to be appointed from amongst the persons who have been members of the Council for at least one full term;

(c) two members to be nominated by the Central Government from amongst persons having knowledge and practical experience in the field of law, education, economics, business, finance, accountancy or public administration.

(2) The Chairperson and other members shall be part-time members.

22B. (1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

Term of
office of
Chairperson
and Members
of Authority.

(2) A person appointed as a member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-seven years, whichever is earlier.

22C. (1) The allowances payable to, and other terms and conditions of service of, the Chairperson and members shall be such as may be specified.

Allowances and
conditions of
service of
Chairperson
and members of
Authority.

(2) The allowances to the Chairperson and members shall be paid by the Council in such manner as may be specified.

22D. (1) The Authority shall meet at such time and place and follow in its meetings and in discharging its functions such procedure as may be specified.

Procedure to
be regulated
by Authority.

(2) All orders and decisions of the Authority shall be authenticated by an officer duly authorised by the Chairperson in this behalf.

22E. (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

Officers and
other staff of
Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members made available to the Authority shall be such as may be prescribed.

22F. (1) The Chairperson or a member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation
and removal
of
Chairperson
and members.

Provided that the Chairperson or a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is earlier.

(2) The Chairperson or a member shall not be removed from his office except by

an order of the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

Appeal to
Authority.

22G. (1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in section 21D, may within thirty days of the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Authority may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Council under section 21D and may—

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Disciplinary Committee for such further inquiry as the Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has also been given an opportunity of being heard.”

18. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

“CHAPTER VII A

QUALITY REVIEW BOARD

28A. (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairman and ten other members.

(2) The Chairman and members of the Board shall be appointed from amongst the persons having eminence and experience in the field of law, education, economics, business, finance, accountancy or public administration.

(3) Five members of the Board shall be nominated by the Council and other five members shall be nominated by the Central Government.

28B. The Board shall perform the following functions, namely:—

- (a) to fix standards for the services provided by the members of the Institute;
- (b) to review the quality of services provided by the members of the Institute including audit services; and
- (c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

28C. The Board shall follow in its meeting and in discharging its functions such procedure as may be specified.

28D. The terms and conditions of service of the Chairman and the members of

Insertion of
new Chapter
VIIA.

Establishment
of Quality
Review
Board.

Functions of
Board.

Procedure of
Board.

the Board, their place of meetings, remuneration and allowances shall be such as may be specified.

28E. The expenditure of the Board shall be borne by the Council.”.

Term and conditions of Chairman and members of Board.

Expenditure of Board.

19. After section 29 of the principal Act, the following section shall be inserted, namely:—

“29A. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

Insertion of new section 29A.

Power of Central Government to make rules.

(2) In particularly and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of election and nomination in respect of members to the Council under sub-section (2) of section 9;

(b) the terms and conditions of service of the Presiding Officers and Members of the tribunal, place of meeting, remuneration and allowances to be paid to them under sub-section (3) of section 10B.

(c) the manner of approval for the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute under clause (f) of sub-section (1) of section 16;

(d) the procedure of inquiry and submission of report by the Disciplinary Committee under sub-section (2) of section 21;

(e) the procedure of inquiry by the Prosecution Director under sub-section (2) of section 21A;

(f) any act or omission which may be determined as professional misconduct under section 22;

(g) the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of payment of allowances by the Council under section 22C;

(h) the procedure to be followed by the Authority in its meetings and in discharging its functions under sub-section (1) of section 22D;

(i) the procedure to be followed by the Board in its meeting and in discharging its functions under section 28C; and

(j) the terms and conditions of service of the Chairman and members of the Board under section 28D.”.

20. In section 30 of the principal Act, in sub-section (1) the words “and a copy of such regulations shall be sent to each member of the Institute” shall be omitted.

Amendment of section 30.

21. For section 30A of the principal Act, the following sections shall be substituted, namely:—

Substitution of new section for section 30A.

Power of Central Government to issue directions.

“30A. (1) For the purposes of this Act, the Central Government may, from time to time, give to the Council such general or special directions as it thinks fit, and the Council shall, in the discharge of its functions under this Act, comply with any such directions.

(2) If, in the opinion of the Central Government, the Council has persistently made default in giving effect to the directions issued under sub-section (1), it may, after giving an opportunity of being heard to the Council, by notification, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be decided by the Central Government.

(3) Where the Central Government has issued a notification under sub-section (2) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any person or body of persons to take over the management of the affairs of the Council and to exercise such functions as may be mentioned in the notification.

Protection of
action taken
in good faith.

30AA. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Disciplinary Committee or the Tribunal or the Authority or the Board or the Prosecution Director or any officer of that Government, Council, Committee, Tribunal, Authority or Board, for any thing which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

Members,
etc., to be
public
servants.

30AAA. The Chairperson, members and other officers and employees of the Tribunal, Authority and Board, and the Prosecution Director shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. ”

45 of 1860.

Substitution
of new
section for
section 30B.

22. For section 30B of the principal Act, the following section shall be substituted, namely:—

Rules and
regulations to
be laid before
Parliament.

“30B. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the regulation, or both Houses agree that the rule or the regulation should not be made, the rule or the regulation, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”

Substitution
of new
Schedule for
First Schedule
and Second
Schedule

23. For the First Schedule and the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:—

‘THE SCHEDULE

(See sections 21D and 22)

PART I

Professional misconduct in relation to Chartered Accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(1) allows any person to practise in his name as a chartered accountant unless such person is also a chartered accountant in practice and is in partnership with or employed by himself;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner,

Explanation.—In this item “partner” includes a person residing outside India with whom a chartered accountant in practice has entered into partnership which is not in contravention of item (4) of this part;

(3) accepts or agrees to accept any part of the profits of the professional work of a lawyer, auctioneer, broker, or other agent who is not a member of the Institute;

(4) enters into partnership with any person other than a chartered accountant in practice or a person resident without India who but for his residence abroad would be entitled to be registered as a member under clause (v) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships, provided that the chartered accountant shares in the fees or profits of the business of the partnership both within and without India;

(5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a chartered accountant, any professional business;

(6) solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means;

(7) advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

(8) accepts a position as auditor previously held by another chartered accountant or a restricted state auditor without first communicating with him in writing;

(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with;

(10) charges or offers to charge, accepts or offers to accept in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except in cases which are permitted under any regulations made under this Act;

(11) engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a company, unless he or any of his partner is interested in such company as an auditor.

(12) accepts a position as auditor previously held by some other chartered accountant or a restricted state auditor in such conditions as to constitute undercutting;

(13) allows a person not being a member of the Institute or a member not being his partner to sign on his behalf or on behalf of his firm, any balance-sheet, profit and loss account, report or financial statements;

(14) discloses information acquired in the course of his professional engagement to any person other than his client, without the consent of his client or otherwise than as required by any law for the time being in force;

(15) certifies or submits in his name or in the name of his firm a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice;

(16) permits his name or the name of his firm to be used in connection with an estimate of earning contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(17) expresses his opinion on financial statements of any business or any enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;

(18) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary to make the financial statement not misleading;

(19) fails to report a material mis-statement known to him to appear in a financial statement with which he is concerned in a professional capacity;

(20) is grossly negligent in the conduct of his professional duties;

(21) fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of an opinion;

(22) fails to invite attention to any material departure from the generally accepted procedure of audit applicable in the circumstances;

(23) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person—

(a) pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by the member;

(b) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;

(c) discloses confidential information acquired in the course of his employment except as and when required by law or except as permitted by the employer.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;

(2) not being a fellow styles himself as a fellow;

(3) does not supply the information called for, or does not comply with the requirements asked for, by the Council or any of its Committees;

(4) contravenes any of the provisions of this Act or the regulations made thereunder;

(5) is guilty of such other act or omission as may be specified.

STATEMENT OF OBJECTS AND REASONS

The Chartered Accountants Act, 1949, which is in force for more than fifty years requires updation because of the changes that have taken place during this period and on the basis of experience by the Institute of Chartered Accountants of India and the Government while administering and implementing the provisions of the Act.

2. The Joint Parliamentary Committee has also adversely commented on the slow disciplinary procedure for the erring members of the Institute. A High Level Committee under the Chairmanship of Shri Naresh Chandra, former Cabinet Secretary, was in the meanwhile constituted, *inter alia*, to examine the Auditor-Company relationship and the disciplinary mechanism for the Auditors. It is proposed to bring about amendments in the Act to implement the Naresh Chandra Committee's recommendations regarding disciplinary procedure and setting up of Quality Review Board.

3. The Institute also has faced certain difficulties, like in increasing membership fee to cover increased activities, short term of the Council, etc., and has suggested a number of amendments in the Act.

4. It has also been felt necessary to bring, as far as possible, uniformity in the Acts of the three professional Institutes, namely the Institute of Chartered Accountants of India, Institute of Cost and Works Accountants of India and the Institute of Company Secretaries of India. Some of the amendments in the Act have become necessary to achieve this uniformity.

5. Some of the main amendments proposed to be made in the Bill are as follows:—

(a) strengthening of Disciplinary Committee and also providing for constitution of more than one Disciplinary Committee, as and when deemed fit, which will enable the disposal of the increased number of disciplinary cases, consequent upon the huge increase in the membership of the Institute and in the number of practising chartered accountants;

(b) appointment of a Prosecution Directorate which will hasten the disciplinary process and also impart an objectivity;

(c) constitution of an Appellate Authority to be headed by a person who is, or has been, or is qualified to be a judge of a High Court to deal with the appeals against the orders of the Council;

(d) setting up a mechanism for review of the quality of audit, enhancing the powers to the Council to fix fees, increase the term of the Council from three to four years, streamlining the election process and prescribing certain restrictions with regards to eligibility of members for contesting elections for the Council of the Institute.

6. The Bill seeks to achieve the above objects.

JASWANT SINGH.

Notes on Clauses

Clause 2 seeks to define various expressions used in the Bill.

Clause 3 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee of associate members of the Institute.

Clause 4 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee of fellow members of the Institute.

Clause 5 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee for certificate of practice. The clause also provides for cancellation of certificate of practice under the circumstances as may be prescribed by regulations.

Clause 6 seeks to provide for enhancing the total strength of the Council of the Institute from thirty to forty and also provides that the manner of election and nomination will be specified by rules. The clause also debars persons holding office of profit under Central Government or a State Government from contesting election to the Council.

Clause 7 seeks to provide that a member of the Council shall be eligible for re-election for a maximum of three consecutive terms. The clause debars sitting and former Presidents of the Council from contesting election of the Council. This clause also provides for settlement of election disputes and establishment of election tribunal.

Clause 8 seeks to provide for the continuation in office of the Vice-President till his successor takes charge, as is the case with the President of the Council.

Clause 9 seeks to change the period for not filling up a casual vacancy from six months to one year, prior to the date of expiration of the duration of the Council.

Clause 10 seeks to provide for enhancement of duration of the Council from three to four years.

Clause 11 seeks to provide that the Council shall approve foreign travel tours of the members of the Council and its Committees and staff of the Institute in accordance with rules framed by the Central Government for this purpose.

Clause 12 seeks to, *inter alia*, provide for increasing the strength of the Executive Committee and the Examination Committee.

Clause 13 seeks to provide that the Council, with the prior approval of the Central Government, may determine the annual membership fee of the Institute. The clause also provides that the list of members can be supplied to the members on payment of the prescribed amount.

Clause 14 seeks to provide that the Council may re-enter the name of the member of the Institute, if his name has been removed for non-payment of dues, on payment of such additional fee as may be determined by the Council with the prior approval of the Central Government.

Clause 15 seeks to, *inter alia*, provide for constitution of more than one Disciplinary Committee, appointment of a prosecution directorate and empowering them and the Appellate Authority to, summon and enforce the attendance of any person and examining him on oath, to discover and production of any document, and receive evidence on affidavit. The clause also provides for action to be taken by the Council on the Disciplinary Committee report and the penalties, which Council can impose on a member of the Institute.

Clause 17 seeks to, *inter alia*, provide for constitution of an Appellate Authority, its composition, the term of office of Chairperson and Members, their allowances and terms and conditions of service and resignation and removal of Chairperson and Members. It also provides for the procedures to be adopted by the authority and powers of the authority with regards to the orders passed by the Council.

Clause 18 seeks to, *inter alia*, provide for establishment of a Quality Review Board, its functions, procedures, the terms and conditions of service of Chairman and Members, which will review the quality of audit and other services provided by the members of the Institute.

Clause 19 seeks to confer upon the Central Government the power to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the various matters in respect of which such rules may be made.

Clause 21 seeks to, *inter alia*, empower the Central Government to issue such general or special directions, as it thinks fit, to the Council, making it obligatory on the part of the Council to comply with such directions. It also empowers the Central Government to dissolve the Council after giving an opportunity of being heard. The clause also seeks to make provision for protection of action taken in good faith.

Clause 22 seeks to provide for laying of the rules and regulations on the table of both the Houses of Parliament.

Clause 23 seeks to provide for substitution of a new Schedule for the existing two Schedules.

FINANCIAL MEMORANDUM

The Bill seeks to appoint a Prosecution Director, constitute an Appellate Authority and establish a Quality Review Board. The expenditure in this regard is to be borne by the Council of the Institute and there shall be no expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 3, 4, 5 and 13 of the Bill seek to amend sections 4, 5, 6 and 19 of the principal Act so as to empower the Council to determine the fee with the prior approval of the Central Government.

2. Clause 5 also seeks to amend section 6 of the principal Act so as to empower the Council to cancel the certificate of practice under the circumstances as may be prescribed by regulations.

3. Clause 6 of the Bill seeks to amend section 9 of the principal Act so as to empower the Central Government to specify by rules the manner of election and nomination of the members to the Council.

4. Clause 7 of the Bill seeks to insert a new section 10B so as to empower the Central Government to specify the terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, remuneration and allowances.

5. Clause 11 of the Bill seeks to amend section 16 of the principal Act so as to empower the Central Government to specify by rules the manner of approval of the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute.

6. Clause 13 of the Bill also seeks to amend section 19 of the principal Act so as to empower the Council to prescribe by regulation the amount a member is to pay for a copy of the list of members.

7. Clause 14 of the Bill seeks to amend section 20 of the principal Act so as to empower the Council to determine the additional fee for re-entering the name of a member with the prior approval of the Central Government.

8. Clause 15 of the Bill seeks to amend section 21 of the principal Act so as to empower the Central Government to specify by rules the procedure of inquiry and the period for submission of report by the Disciplinary Committee and the procedure of inquiry by the Prosecution Director.

9. Clause 16 of the Bill seeks to amend section 22 of the principal Act so as to empower the Central Government to specify by rules act or omission which may be determined as professional misconduct.

10. Clause 17 of the Bill seeks to add a new section after section 22 of the principal Act so as to empower the Central Government to specify by rules the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of payment of allowances by the Council and the procedure to be followed by the Authority in its meetings and in discharging its functions.

11. Clause 18 of the Bill seeks to insert a new Chapter after Chapter VII to the principal Act so as to empower the Central Government to specify by rules the procedure to be followed by the Board in its meeting and in discharging its functions and the terms and conditions of service of the Chairman and the members of the Board.

12. The matters in respect of which the said rules or regulations may be made are matters of procedure and administrative detail, and it is not practicable to provide them in the proposed legislation itself.

13. The delegation of legislative power is, therefore, of a normal character.

II

BILL NO. LXXVII OF 2003

A Bill further to amend the Cost and Works Accountants Act, 1959.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

Short title and
commence-
ment.

1. (1) This Act may be called the Cost and Works Accountants (Amendment) Act, 2003.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment
of section 2.

2. In the Cost and Works Accountants Act, 1959 (hereinafter referred to as the principal Act), in sub-section (1) of section 2,—

(i) after clause (a), the following clauses shall be inserted, namely:—

“(aa) “Authority” means the Appellate Authority referred to in section 22A;

“(aaa) “Board” means the Quality Review Board constituted under section 29A;”;

(ii) after clause (f), the following clause shall be inserted, namely:—

‘(fa) “notification” means a notification published in the Official Gazette;’;

(iii) after clause (i), the following clauses shall be inserted, namely:—

‘(ia) “specified” means specified by rules made by the Central Government under this Act;

(ib) “Tribunal” means a Tribunal established under sub-section (1) of section 10B;’.

3. In section 4 of the principal Act, in sub-section (3), for the words “the prescribed entrance fee, which shall not exceed rupees three hundred”, the words “such fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees three thousand” shall be substituted.

Amendment of
section 4.

4. In section 5 of the principal Act, in sub-section (4), for the words “the prescribed entrance fee, which shall not exceed rupees two hundred”, the words “such fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees five thousand” shall be substituted.

Amendment of
section 5.

5. In section 6 of the principal Act,—

(i) in sub-section (2), for the word “prescribed”, the words “determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees three thousand in any case” shall be substituted;

Amendment of
section 6.

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.”.

6. In section 9 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

Amendment of
section 9.

“(2) The Council shall be composed of the following persons, namely:—

(a) not more than fifteen persons elected in the specified manner by members of the Institute, from amongst the fellows of the Institute, and

(b) not more than five persons nominated in the specified manner by the Central Government.

(3) No person holding an office of profit under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).”.

7. For section 10 of the principal Act, the following sections shall be substituted, namely:—

Substitution of
new sections
for section 10.

“10. (1) A member of the Council elected under clause (a) of sub-section (2) of section 9 shall be eligible for re-election but not for more than three consecutive terms.

Re-election to
Council.

(2) A member of the Council, who is or has been elected, as President under sub-section (1) of section 12, shall not be eligible for re-election as a member of the Council.

10A. In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of the declaration of the result of the election to the Council which shall forward the same forthwith to the Central Government.

Settlement of
dispute regard-
ing election.

Establishment
of Tribunal.

10B. (1) On receipt of any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other members to decide such dispute and the decision of such Tribunal shall be final.

(2) A person shall not be qualified for appointment,—

(a) as a Presiding Officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade I of the service for at least three years;

(b) as a Member unless he has been a member of the Council for at least one full term; and

(c) as a Member holding the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, remuneration and allowances shall be such as may be specified.

(4) The expenses of the Tribunal shall be borne by the Council.”.

Amendment of
section 12.

8. In section 12 of the principal Act, in the proviso to sub-section (3), for the word “President”, the words “President and the Vice-President” shall be substituted.

Amendment of
section 13.

9. In section 13 of the principal Act, in the proviso to sub-section (3), for the words “six months”, the words “one year” shall be substituted.

Amendment of
section 14.

10. In section 14 of the principal Act, in sub-section (1), for the words “three years”, the words “four years” shall be substituted.

Amendment of
section 16.

11. In section 16 of the principal Act, in sub-section (1), after clause (e), the following clause shall be inserted, namely:—

“(f) approve the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute in such manner as may be specified.”.

Amendment of
section 17.

12. In section 17 of the principal Act,—

(a) in sub-section (1), clause (ii) shall be omitted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Each of the Standing Committees shall consist of the President and the Vice-President *ex officio*, and minimum of three and maximum of five members of the Council elected by the Council, out of which one shall be the member nominated under clause (b) of sub-section (2) of section 9.”;

(c) sub-sections (4), (5) and (6) shall be omitted.

Amendment of
section 19.

13. In section 19 of the principal Act,—

(i) in sub-section (3), the words “on payment of such amount as may be prescribed” shall be inserted at the end;

(ii) in sub-section (4), for the word “prescribed”, the words “determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees five thousand in any case” shall be substituted.

Amendment of
section 20.

14. In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) If the name of any member has been removed from the register under clause

(c) of sub-section (1), on receipt of an application, his name may be entered again in the register on payment of the arrears of determined annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees two thousand in any case."

15. For section 21 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for section 21.

"21. (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members of the Council elected by the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, education, economics, business, finance, accountancy or public administration:

Disciplinary Committee.

Provided that the Council may constitute more regional Disciplinary Committees as and when it deems fit.

(2) The Disciplinary Committee in making the inquiry under the provisions of this Act shall follow such procedure and submit the report to the Council within such time as may be specified.

21A. (1) The Council shall, by notification, appoint a Prosecution Director and such other employees for making inquiries in respect of any information or complaint received by it under the provisions of this Act.

Appointment of Prosecution Director.

(2) In order to make inquiries under the provisions of this Act, the Prosecution Director shall follow such procedures as may be specified.

21B. For the purposes of an inquiry under the provision of this Act, the Authority, the Council, the Disciplinary Committee and the Prosecution Director shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

Authority, Council, Disciplinary Committee and Prosecution Director to have powers of Civil Court.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

21C. (1) On receipt of a report from the Disciplinary Committee, if the Council is satisfied that the member of the Institute is guilty of any professional or other misconduct, it shall record its findings accordingly and shall proceed in accordance with the provisions of section 21D.

Action by Council on Disciplinary Committee report.

(2) In case the Council is not satisfied with the report of the Disciplinary Committee and is of the opinion that it requires further inquiry, it may refer the report again to the Disciplinary Committee for such further inquiry as may be directed through an order of the Council.

(3) If the Council disagrees with the findings of the Disciplinary Committee, it may direct the Prosecution Director to make an appeal to the Authority.

21D. Where the Council is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Schedule, it shall afford to the member a reasonable opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

Member to be afforded opportunity of being heard.

(a) reprimand the member; or

(b) remove the name of the member from the register permanently or for such period, as it thinks fit.

Explanation.—For the purposes of this section “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.”

Amendment of
section 22.

16. In section 22 of the principal Act,—

(i) for the words “specified in any of the Schedules”, the words “mentioned in the Schedule or as may be specified” shall be substituted;

(ii) the words “under sub-section (1) of section 21” shall be omitted.

Insertion of
new sections
after section 22.

17. After section 22 of the principal Act, the following sections shall be inserted, namely:—

Constitution of
Authority.

‘22A. The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause (b) of said sub-section (1), the following clause had been substituted, namely:—

38 of 1949.

(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Cost and Works Accountants for at least one full term.

Term of office
of Chairperson
and Members
of Authority.

22B. (1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-seven years, whichever is earlier.

Allowances
and conditions
of service of
Chairperson
and members
of Authority.

22C. (1) The allowances payable to, and other terms and conditions of service of, the Chairperson and members shall be such as may be specified.

(2) The allowances to the Chairperson and members shall be paid by the Council in such manner as may be specified.

Procedure to be
regulated by
Authority.

22D. (1) The Authority shall meet at such time and place and follow in its meetings and in discharging its functions such procedure as may be specified.

(2) All orders and decisions of the Authority shall be authenticated by an officer duly authorised by the Chairperson in this behalf.

Office and other
staff of
Authority.

22E. (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members made available to the Authority shall be such as may be prescribed.

Resignation and
removal of
Chairperson
and members.

22F. (1) The Chairperson or a member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is earlier.

(2) The Chairperson or a member shall not be removed from his office except by an order of the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

22G. (1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in section 21D, may within thirty days of the date on which the order is communicated to him, prefer an appeal to the Authority:

Appeal to
Authority.

Provided that the Authority may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Council under section 21D and may—

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Disciplinary Committee for such further inquiry as the Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has also been given an opportunity of being heard.

18. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of
new Chapter
VII A.

“CHAPTER VII A

QUALITY REVIEW BOARD

29A. (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairman and four other members.

Establishment
of Quality
Review Board.

(2) The Chairman and members of the Board shall be appointed from amongst the persons having eminence and experience in the field of law, education, economics, business, finance, accountancy or public administration.

(3) Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.

29B. The Board shall perform the following functions, namely:—

Functions of
Board.

(a) to fix standards for the services provided by the members of the Institute;

(b) to review the quality of services provided by the members of the Institute including cost audit services; and

(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

29C. The Board shall follow in its meeting and in discharging its functions such procedure as may be specified.

Procedure of
Board.

Terms and conditions of Chairman and members of Board.
Expenditure of Board.

29D. The terms and conditions of service of the Chairman and the members of the Board, their place of meetings, remuneration and allowances shall be such as may be specified.

29E. The expenditure of the Board shall be borne by the Council.”.

Omission of section 33.

19. Section 33 of the principal Act shall be omitted.

Substitution of new sections for sections 35 and 36.

20. For sections 35 and 36 of the principal Act, the following sections shall be substituted, namely:—

Power of Central Government to issue directions.

“35. (1) For the purposes of this Act, the Central Government may, from time to time, give to the Council such general or special directions as it thinks fit, and the Council shall, in the discharge of its functions under this Act, comply with any such directions.

(2) If, in the opinion of the Central Government, the Council has persistently made default in giving effect to the directions issued under sub-section (1), it may, after giving an opportunity of being heard to the Council, by notification, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be decided by the Central Government.

(3) Where the Central Government has issued a notification under sub-section (2) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any person or body of persons to take over the management of the affairs of the Council and to exercise such functions as may be mentioned in the notification.

Protection of action taken in good faith.

36. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Disciplinary Committee or the Tribunal or the Authority or the Board or the Prosecution Director or any officer of that Government, Council, Committee, Tribunal, Authority or Board, for anything which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

Members, etc., to be public servants.

36A. The Chairpersons, members and other officers and employees of the Tribunal, Authority and Board, and the Prosecution Director shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.”.

45 of 1860.

Insertion of new section 38A.

21. After section 38 of the principal Act, the following section shall be inserted, namely:—

Power of Central Government to make rules.

“38A. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of election and nomination in respect of members to the Council under sub-section (2) of section 9;

(b) the terms and conditions of service of the Presiding Officers and Members of the Tribunal, place of meeting, remuneration and allowances to be paid to them under sub-section (3) of section 10B.

(c) the manner of approval for the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and

officers and employees of the Institute under clause (f) of sub-section (1) of section 16;

(d) the procedure of inquiry and submission of report by the Disciplinary Committee under sub-section (2) of section 21;

(e) the procedure of inquiry by the Prosecution Director under sub-section (2) of section 21A;

(f) any act or omission which may be determined as professional misconduct under section 22;

(g) the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of payment of allowances by the Council under section 22C;

(h) the procedure to be followed by the Authority in its meetings and in discharging its functions under sub-section (1) of section 22D;

(i) the procedure to be followed by the Board in its meeting and in discharging its functions under section 29C; and

(j) terms and conditions of service of the Chairman and Members of the Board under section 29D.”.

22. In section 39 of the principal Act,—

Amendment of
section 39.

(i) in sub-section (1), the words “and a copy of such regulations shall be sent to each member of the Institute” shall be omitted;

(ii) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the regulation, or both Houses agree that the rule or the regulation should not be made, the rule or the regulation, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”.

23. For the First Schedule and the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:—

Substitution
of new
Schedule for
First Schedule
and Second
Schedule.

‘THE SCHEDULE

(See sections 21D and 22)

PART I

Professional misconduct in relation to cost accountants in practice

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(1) allows any person to practise in his name as a cost accountant unless such person is also a cost accountant in practice and is in partnership with or employed by himself;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner;

Explanation.—In this item “partner” includes a person residing outside India with whom a cost accountant in practice has entered into partnership which is not in contravention of item (4) of this part;

(3) accepts or agrees to accept any part of the profits of the professional work of a lawyer, auctioneer, broker or other agent who is not a member of the Institute;

(4) enters into partnership with any person other than a cost accountant in practice or a person resident without India who but for his residence abroad would be entitled to be registered as a member of the Institute under clause (iv) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships, provided that the cost accountant shares in the fees or profits of the professional work of the partnership both within and without India;

(5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a cost accountant, any professional work;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;

(7) advertises his professional attainments or services, or uses any designation or expressions other than cost accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Cost and Works Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

(8) accepts a position as cost accountant previously held by another Cost Accountant in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except in cases which are permitted under any rule or regulation made under this act;

(10) engages in any business or occupation other than the profession of cost accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a cost accountant from being a director of a company unless he or any of his partners is interested in such company as accountant;

(11) accepts a position as cost accountant previously held by some other cost accountants in practice in such conditions as to constitute undercutting;

(12) allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm any cost or pricing statements or any other statements related thereto;

(13) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force;

(14) certifies or submits in his name or in the name of his firm a report of an examination of cost accounting and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another cost accountant in practice;

(15) permits his name or the name of his firm to be used in connection with an estimate of cost or earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(16) expresses his opinion on cost or pricing statements of any business or any enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;

(17) fails to disclose in a cost or pricing statement a material fact known to him, which is not disclosed in a cost or pricing statement but disclosure of which is necessary to make such statement not misleading;

(18) fails to report a material mis-statement known to him to appear in a cost or pricing statement with which he is concerned in a professional capacity;

(19) is grossly negligent in the conduct of his professional duties;

(20) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion;

(21) fails to invite attention to any material departure from the generally accepted procedure of costing and pricing applicable to the circumstances;

(22) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person—

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by the member;

(2) accepts or agrees to accept any part of fees, profit or gains from a lawyer, a cost accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;

(3) discloses confidential information acquired in the course of his employment otherwise than as required by any law for the time being in force or as permitted by his employer.

PART III

Professional misconduct in relation to members of the Institute generally

A member of Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he—

(1) includes in any statement, return or form to be submitted to the Council any particulars knowing to be false;

(2) not being a fellow styles himself as a fellow;

(3) does not supply the information called for, or does not comply with the requirements asked for, by the Council or any of its Committees.

(4) contravenes any of the provisions of this Act or the rules/regulations made there under;

(5) is guilty of such other act or omission as may be specified. '.

STATEMENT OF OBJECTS AND REASONS

The Cost and Works Accountants Act, 1959, which is in force for more than forty years requires updation because of the changes that have taken place during this period and on the basis of experience by the Institute of Cost and Works Accountants of India and the Government while administering and implementing the provisions of the Act.

2. A High Level Committee under the Chairmanship of Shri Naresh Chandra, former Cabinet Secretary, was in the meanwhile constituted, *inter alia*, to examine the Auditor-Company relationship and the disciplinary mechanism for the Auditors. It is proposed to bring about amendments in the Act to implement the Naresh Chandra Committee's recommendations regarding disciplinary procedure and setting up of Quality Review Board.

3. The Institute also has faced certain difficulties, like in increasing membership fee to cover increased activities, short term of the Council, etc., and has suggested a number of amendments in the Act.

4. It has also been felt necessary to bring, as far as possible, uniformity in the Acts of the three professional Institutes, namely the Institute of Chartered Accountants of India, Institute of Cost and Works Accountants of India and the Institute of Company Secretaries of India. Some of the amendments in the Act have become necessary to achieve this uniformity.

5. Some of the main amendments proposed to be made in the Bill are as follows: —

(a) strengthening of Disciplinary Committee and also providing for constitution of more than one disciplinary committee, as and when deemed fit, which will enable the disposal of the increased number of disciplinary cases, consequent upon the increase in the membership of the Institute and in the number of practising cost accountants;

(b) appointment of a Prosecution Directorate which will hasten the disciplinary process and also impart an objectivity;

(c) constitution of an Appellate Authority to be headed by a person who is, or has been, or is qualified to be a judge of a High Court to deal with the appeals against the orders of the Council;

(d) setting up a mechanism for review of the quality of cost audit, enhancing the powers to the Council to fix fees, increase the term of the Council from three to four years, streamlining the election process and prescribing certain restrictions with regards to eligibility of members for contesting elections for the Council of the Institute.

6. The Bill seeks to achieve the above objects.

JASWANT SINGH.

Notes on clauses

Clause 2 seeks to define various expressions used in the Bill.

Clause 3 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee of associate members of the Institute.

Clause 4 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee of fellow members of the Institute.

Clause 5 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee for certificate of practice. The clause also provides for cancellation of certificate of practice under the circumstances as may be prescribed by regulations.

Clause 6 seeks to provide for enhancing the total strength of the Council of the Institute from sixteen to twenty and also provides that the manner of election and nomination will be specified by rules. The clause also debars persons holding office of profit under Central Government or a State Government from contesting election to the Council.

Clause 7 seeks to provide that a member of the Council shall be eligible for re-election for a maximum of three consecutive terms. The clause debars sitting and former Presidents of the Council from contesting election of the Council. This clause also provides for settlement of election disputes and establishment of election tribunal.

Clause 8 seeks to provide for the continuation in office of the Vice-President till his successor takes charge, as is the case with the President of the Council.

Clause 9 seeks to change the period for not filling up a casual vacancy from six months to one year, prior to the date of expiration of the duration of the Council.

Clause 10 seeks to provide for enhancement of duration of the Council from three to four years.

Clause 11 seeks to provide that the Council shall approve foreign travel tours of the members of the Council and its Committees and staff of the Institute in accordance with rules framed by the Central Government for this purpose.

Clause 12 seeks to, *inter alia*, provide for increasing the strength of the Executive Committee and the Examination Committee.

Clause 13 seeks to provide that the Council, with the prior approval of the Central Government, may determine the annual membership fee of the Institute. The clause also provides that the list of members can be supplied to the members on payment of the prescribed amount.

Clause 14 seeks to provide that the Council may re-enter the name of the member of the Institute, if his name has been removed for non-payment of dues, on payment of such additional fee as may be determined by the Council with the prior approval of the Central Government.

Clause 15 seeks to, *inter alia*, provide for constitution of more than one Disciplinary Committee, appointment of a prosecution directorate and empowering them and the Appellate Authority to, summon and enforce the attendance of any person and examining him on oath, to discover and production of any document, and receive evidence on affidavit. The clause also provides for action to be taken by the Council on the Disciplinary Committee report and the penalties, which Council can impose on a member of the Institute.

Clause 17 seeks to, *inter alia*, provide that the Appellate Authority constituted under Chartered Accountants Act, 1949 shall be deemed to be Appellate Authority under this Act with some changes with the term of office of Chairperson and Members, their allowances and terms and conditions of service and resignation and removal of Chairperson and Members. It also provides for the procedures to be adopted by the authority and powers of the authority with regards to the orders passed by the Council.

Clause 18 seeks to, *inter alia*, provide for establishment of a Quality Review Board, its functions, procedures, the terms and conditions of service of Chairman and Members, which will review the quality of audit and other services provided by the members of the Institute.

Clause 20 seeks to, *inter alia*, empower the Central Government to issue such general or special directions, as it thinks fit, to the Council, making it obligatory on the part of the Council to comply with such directions. It also empowers the Central Government to dissolve the Council after giving an opportunity of being heard. The clause also seeks to make provision for protection of action taken in good faith.

Clause 21 seeks to confer upon the Central Government the power to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the various matters in respect of which such rules may be made.

Clause 22 seeks to provide for laying of the rules and regulations on the table of both the Houses of Parliament.

Clause 23 seeks to provide for substitution of a new Schedule for the existing two Schedules.

FINANCIAL MEMORANDUM

The Bill seeks to appoint a Prosecution Director, constitute an Appellate Authority and establish a Quality Review Board. The expenditure in this regard is to be borne by the Council of the Institute and there shall be no expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 3, 4, 5 and 13 of the Bill seek to amend sections 4, 5, 6 and 19 of the principal Act so as to empower the Council to determine the fee with the prior approval of the Central Government.

2. Clause 5 also seeks to amend section 6 of the principal Act so as to empower the Council to cancel the certificate of practice under the circumstances as may be prescribed by regulations.

3. Clause 6 of the Bill seeks to amend section 9 of the principal Act so as to empower the Central Government to specify by rules the manner of election and nomination of the members to the Council.

4. Clause 7 of the Bill seeks to insert a new section 10B so as to empower the Central Government to specify the terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, remuneration and allowances.

5. Clause 11 of the Bill seeks to amend section 16 of the principal Act so as to empower the Central Government to specify by rules the manner of approval of the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute.

6. Clause 13 of the Bill also seeks to amend section 19 of the principal Act so as to empower the Council to prescribe by regulation the amount a member is to pay for a copy of the list of members.

7. Clause 14 of the Bill seeks to amend section 20 of the principal Act so as to empower the Council to determine the additional fee for re-entering the name of a member with the prior approval of the Central Government.

8. Clause 15 of the Bill seeks to amend section 21 of the principal Act so as to empower the Central Government to specify by rules the procedure of inquiry and the period for submission of report by the Disciplinary Committee and the procedure of inquiry by the Prosecution Director.

9. Clause 16 of the Bill seeks to amend section 22 of the principal Act so as to empower the Central Government to specify by rules act or omission which may be determined as professional misconduct.

10. Clause 17 of the Bill seeks to add a new section after section 22 of the principal Act so as to empower the Central Government to specify by rules the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of payment of allowances by the Council and the procedure to be followed by the Authority in its meetings and in discharging its functions.

11. Clause 18 of the Bill seeks to insert a new Chapter after Chapter VII to the principal Act so as to empower the Central Government to specify by rules the procedure to be followed by the Board in its meeting and in discharging its functions and the terms and conditions of service of the Chairman and the members of the Board.

12. The matters in respect of which the said rules or regulations may be made are matters of procedure and administrative detail, and it is not practicable to provide them in the proposed legislation itself.

13. The delegation of legislative power is, therefore, of a normal character.

III

BILL NO. LXXVIII OF 2003

A Bill further to amend the Company Secretaries Act, 1980.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Company Secretaries (Amendment) Act, 2003.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

56 of 1980.

2. In the Company Secretaries Act, 1980 (hereafter referred to as the principal Act), in sub-section (1) of section (2),—

Amendment of
section 2.

(i) after clause (a), the following clauses shall be inserted, namely:—

'(aa) "Authority" means the Appellate Authority referred to in section 22A;

(aaa) "Board" means the Quality Review Board constituted under section 29A;';

(ii) after clause (g), the following clause shall be inserted, namely:—

'(ga) "notification" means a notification published in the Official Gazette;';

(iii) after clause (j), the following clauses shall be inserted, namely:—

'(ja) "specified" means specified by rules made by the Central Government under this Act;

(jb) "Tribunal" means a Tribunal established under sub-section (1) of section 10B;';

Amendment of
section 4.

3. In section 4 of the principal Act, in sub-section (3), for the words "prescribed entrance fee, which shall not exceed four hundred rupees", the words "such fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees three thousand" shall be substituted.

Amendment of
section 5.

4. In section 5 of the principal Act, in sub-section (3), for the words "the prescribed entrance fee, which shall not exceed four hundred rupees", the words "such fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees five thousand" shall be substituted.

Amendment of
section 6.

5. In section 6 of the principal Act,—

(i) in sub-section (2), for the words "prescribed which shall not exceed two hundred rupees", the words "determined by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees three thousand" shall be substituted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed."

Amendment of
section 9.

6. In section 9 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

"(2) The Council shall be composed of the following persons, namely:—

(a) not more than fifteen persons elected in the specified manner by members of the Institute, from amongst the fellows of the Institute, and

(b) not more than five persons nominated in the specified manner by the Central Government.

(3) No person holding an office of profit under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2)."

Substitution of
new sections for
section 10.

7. For section 10 of the principal Act, the following sections shall be substituted, namely:—

Re-election to
Council.

"10. (1) A member of the Council elected under clause (a) of sub-section (2) of section 9 shall be eligible for re-election but not for more than three consecutive terms.

(2) A member of the Council, who is or has been elected, as President under sub-section (1) of section 12, shall not be eligible for re-election as a member of the Council.

10A. In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of the declaration of the result of the election to the Council which shall forward the same forthwith to the Central Government.

Settlement of
dispute regard-
ing election.

10B. (1) On receipt of any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other Members to decide such dispute and the decision of such Tribunal shall be final.

Establishment
of Tribunal.

(2) A person shall not be qualified for appointment,—

(a) as a Presiding Officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade I of the service for at least three years;

(b) as a Member unless he has been a member of the Council for at least one full term; and

(c) as a Member holding the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, remuneration and allowances shall be such as may be specified.

(4) The expenses of the Tribunal shall be borne by the Council.”

8. In section 12 of the principal Act, in sub-section (4), for the word “President” wherever it occurs, the words “President and the Vice-President” shall be substituted.

Amendment of
section 12.

9. In section 13 of the principal Act, in the proviso to sub-section (3), for the words “six months”, the words “one year” shall be substituted.

Amendment of
section 13.

10. In section 14 of the principal Act, in sub-section (1), for the words “three years”, the words “four years” shall be substituted.

Amendment of
section 14.

11. In section 16 of the principal Act, in sub-section (1), for clause (c), the following clauses shall be inserted, namely:—

Amendment of
section 16.

“(c) with the previous sanction of the Central Government, fix the allowances of the President, Vice-President and other members of the Council and members of its Committees;

(d) approve the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute in such manner as may be specified.”

12. In section 17 of the principal Act,—

Amendment of
section 17.

(a) in sub-section (1), clause (b) shall be omitted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Each of the Standing Committees shall consist of the President and the Vice-President *ex officio*, and minimum of three and maximum of five members of the Council elected by the Council, out of which one shall be the member nominated under clause (b) of sub-section (2) of section 9.”;

(c) sub-sections (4), (5) and (6) shall be omitted.

Amendment of
section 19.

13. In section 19 of the principal Act,—

(i) in sub-section (3), the words “on payment of such amount as may be prescribed” shall be inserted at the end;

(ii) in sub-section (4), for the word “prescribed, which shall not exceed three hundred rupees”, the words “determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees five thousand” shall be substituted.

Amendment of
section 20.

14. In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) If the name of any member has been removed from the register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the register on payment of the arrears of determined annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees two thousand in any case.”.

Substitution of
new section for
section 21.

15. For section 21 of the principal Act, the following sections shall be substituted, namely:—

Disciplinary
Committee.

‘21. (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members of the Council elected by the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, education, economics, business, finance, accountancy or public administration:

Provided that the Council may constitute more regional Disciplinary Committees as and when it deems fit.

(2) The Disciplinary Committee in making the inquiry under the provisions of this Act shall follow such procedure and submit the report to the Council within such time as may be specified.

Appointment
of
Prosecution
Director.

21A. (1) The Council shall, by notification, appoint a Prosecution Director and such other employees for making inquiries in respect of any information or complaint received by it under the provisions of this Act.

(2) In order to make inquiries under the provisions of this Act, the Prosecution Director shall follow such procedures as may be specified.

Authority,
Council,
Disciplinary
Committee and
Prosecution
Director to
have powers of
Civil Court.

21B. For the purposes of an inquiry under the provision of this Act, the Authority, the Council, the Disciplinary Committee and the Prosecution Director shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Action by
Council on
Disciplinary
Committee's
report.

21C. (1) On receipt of a report from the Disciplinary Committee, if the Council is satisfied that the member of the Institute is guilty of any professional or other misconduct, it shall record its findings accordingly and shall proceed in accordance with the provisions of section 21D.

(2) In case the Council is not satisfied with the report of the Disciplinary Committee and is of the opinion that it requires further inquiry, it may refer the report again to the Disciplinary Committee for such further inquiry as may be directed through an order of the Council.

(3) If the Council disagrees with the findings of the Disciplinary Committee, it may direct the Prosecution Director to make an appeal to the Authority.

21D. Where the Council is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Schedule, it shall afford to the member a reasonable opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

Member to be afforded opportunity of being heard.

(a) reprimand the member; or

(b) remove the name of the member from the register permanently or for such period, as it thinks fit.

Explanation.—For the purposes of this section “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.’.

16. In section 22 of the principal Act,—

Amendment of section 22.

(i) for the words “specified in any of the Schedules”, the words “mentioned in the Schedule or as may be specified” shall be substituted;

(ii) the words “under sub-section (1) of section 21” shall be omitted.

17. After section 22 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections for section 22.

“22A. The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause (b) of said sub-section (1), the following clause shall be substituted, namely:—

Constitution of Authority.

(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries for at least one full term.

22B. (1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

Term of office of Chairperson and members of Authority.

(2) A person appointed as a member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-seven years, whichever is earlier.

22C. (1) The allowances payable to, and other terms and conditions of service of, the Chairperson and members shall be such as may be specified.

Allowances and conditions of service of Chairperson and members of Authority.

(2) The allowances to the Chairperson and members shall be paid by the Council in such manner as may be specified.

22D. (1) The Authority shall meet at such time and place and follow in its meetings and in discharging its functions such procedure as may be specified.

Procedure to be regulated by Authority.

(2) All orders and decisions of the Authority shall be authenticated by an officer duly authorised by the Chairperson in this behalf.

22E. (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

Office and other staff of Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members made available to the Authority shall be such as may be prescribed.

Resignation
and removal of
Chairperson
and members.

22F. (1) The Chairperson or a member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is earlier.

(2) The Chairperson or a member shall not be removed from his office except by an order of the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

Appeal to
Authority.

22G. (1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in section 21D, may within thirty days of the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Authority may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Council under section 21D and may—

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;

(c) remit the case to the Disciplinary Committee for such further inquiry as the Authority considers proper in the circumstances of the case; or

(d) pass such other order as the Authority thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has also been given an opportunity of being heard.

Insertion of new
Chapter VIIA.

18. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

“CHAPTER VIIA

QUALITY REVIEW BOARD

Establishment
of Quality
Review Board.

29A. (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairman and four other members.

(2) The Chairman and members of the Board shall be appointed from amongst the persons having eminence and experience in the field of law, education, economics, business, finance, accountancy or public administration.

(3) Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.

Functions of
Board

29B. The Board shall perform the following functions, namely:—

(a) to fix standards for the services provided by the members of the Institute;

(b) to review the quality of services provided by the members of the Institute including secretarial audit services; and

(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

29C. The Board shall follow in its meeting and in discharging its functions such procedure as may be specified.

Procedure of Board.

29D. The terms and conditions of service of the Chairman and the members of the Board, their place of meetings, remuneration and allowances shall be such as may be specified . .

Terms and conditions of Chairman and members of Board.

29E. The expenditure of the Board shall be borne by the Council.”.

Expenditure of Board.

19. Section 30 of the principal Act shall be omitted.

Omission of section 30.

20. For sections 35 and 36 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 35 and 36.

“35. (1) For the purposes of this Act, the Central Government may, from time to time, give to the Council such general or special directions as it thinks fit, and the Council shall, in the discharge of its functions under this Act, comply with any such directions.

Power of Central Government to issue directions.

(2) If, in the opinion of the Central Government, the Council has persistently made default in giving effect to the directions issued under sub-section (1), it may, after giving an opportunity of being heard to the Council, by notification, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be decided by the Central Government.

(3) Where the Central Government has issued a notification under sub-section (2) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any person or body of persons to take over the management of the affairs of the Council and to exercise such functions as may be mentioned in the notification.

36. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Disciplinary Committee or the Tribunal or the Authority or the Board or the Prosecution Director or any officer of that Government, Council, Committee, Tribunal, Authority or Board, for any thing which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

Protection of action taken in good faith.

36A. The Chairpersons, members and other officers and employees of the Tribunal, Authority and Board, and the Prosecution Director shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. ”.

Members, etc., to be public servants.

21. After section 38 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 38A.

“38A. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of election and nomination in respect of members to the Council under sub-section (2) of section 9;

(b) the terms and conditions of service of the Presiding Officers and Members of the Tribunal, place of meeting, remuneration and allowances to be paid to them under sub-section (3) of section 10B;

(c) the manner of approval for the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute under clause (d) of sub-section (1) of section 16;

(d) the procedure of inquiry and submission of report by the Disciplinary Committee under sub-section (2) of section 21;

(e) the procedure of inquiry by the Prosecution Director under sub-section (2) of section 21A;

(f) any act or omission which may be determined as professional misconduct under section 22;

(g) the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of payment of allowances by the Council under section 22C;

(h) the procedure to be followed by the Authority in its meetings and in discharging its functions under sub-section (1) of section 22D;

(i) the procedure to be followed by the Board in its meeting and in discharging its functions under section 29C; and

(j) terms and conditions of service of the Chairman and Members of the Board under section 29D.”.

Amendment of
section 39.

22. In section 39 of the principal Act, for sub-section (4), the following shall be substituted, namely:—

“(4) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the regulation, or both Houses agree that the rule or the regulation should not be made, the rule or the regulation, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”.

Substitution of
new Schedule
for the First
Schedule and
the Second
Schedule.

23. For the First Schedule and the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:—

“THE SCHEDULE

(See sections 21D and 22)

PART I

Professional misconduct in relation to members of the Institute in practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

(1) allows any other person to practise in his name as a Company Secretary unless such other person is a Company Secretary or is a member of such other recognised profession as may be prescribed in this behalf, and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work to any person, other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner.

Explanation.— In this item, "partner" includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

(3) accepts or agrees to accept, except from a member of the Institute or from any one belonging to any of the recognised professions prescribed for the purpose, any part of the profits, fees or other remuneration arising out of the work which is not of a professional nature;

(4) enters into partnership with any person other than a Company Secretary in practice or a member of any other recognised profession as may be prescribed or a person resident without India who but for his residence abroad would have been entitled to be registered as a member of the Institute under clause (e) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of membership of the Institute provided that the Company Secretary shares in the fees or profit of the professional work of the partnership both within and without India;

(5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a Company Secretary, any professional work;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;

(7) advertises his professional attainments or services, or uses any designation or expression other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

(8) accepts the position of a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any rule or regulation made under this Act;

(10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage :

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act.

(11) accepts a position as Company Secretary in practice previously held by some other Company Secretary in practice in such conditions as to constitute under-cutting;

(12) allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary, or any other statements related thereto.

(13) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him without the consent of such client, or otherwise than as required by any law for the time being in force;

(14) certifies or submits in his name or in the name of his firm a report of an examination of the matters relating to Company Secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or any employee in his firm or by another Company Secretary in practice;

(15) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(16) expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;

(17) deliberately aids in or abets the concealment in his report or statement of a material fact known to him although the disclosure of which is necessary to make such statement not misleading;

(18) fails to disclose in his report a material mis-statement known to him and with which he is concerned in a professional capacity;

(19) is grossly negligent in the conduct of his professional duties:

(20) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion;

(21) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;

(22) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by the member;

(2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;

(3) discloses confidential information acquired in the course of his employment otherwise than as required by any law for the time being in force or as permitted by his employer.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he—

- (1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;
- (2) not being a Fellow styles himself as a Fellow;
- (3) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its Committees;
- (4) defalcates or embezzles moneys received in his professional capacity.
- (5) contravenes any of the provisions of this Act or the rules or regulations made thereunder;
- (6) is guilty of such other act or omission as may be specified.”.

STATEMENT OF OBJECTS AND REASONS

The Company Secretaries Act, 1980, which is in force for more than twenty years requires updation because of the changes that have taken place during this period and on the basis of experience by the Institute of Company Secretaries of India and the Government while administering and implementing the provisions of the Act.

2. A High Level Committee under the Chairmanship of Shri Naresh Chandra, former Cabinet Secretary, was in the meanwhile constituted, *inter alia*, to examine the Auditor-Company relationship and the disciplinary mechanism for the Auditors. It is proposed to bring about amendments in the Act to implement the Naresh Chandra Committee's recommendations regarding disciplinary procedure and setting up of Quality Review Board.

3. The Institute also has faced certain difficulties, like in increasing membership fee to cover increased activities, short term of the Council, etc., and has suggested a number of amendments in the Act.

4. It has also been felt necessary to bring, as far as possible, uniformity in the Acts of the three professional Institutes, namely the Institute of Chartered Accountants of India, Institute of Cost and Works Accountants of India and the Institute of Company Secretaries of India. Some of the amendments in the Act have become necessary to achieve this uniformity.

5. Some of the main amendments proposed to be made in the Bill are as follows:—

(a) strengthening of Disciplinary Committee and also providing for constitution of more than one disciplinary committee, as and when deemed fit, which will enable the disposal of the increased number of disciplinary cases, consequent upon the increase in the membership of the Institute and in the number of practising company secretaries;

(b) appointment of a Prosecution Directorate which will hasten the disciplinary process and also impart an objectivity;

(c) constitution of an Appellate Authority to be headed by a person who is, or has been, or is qualified to be a judge of a High Court to deal with the appeals against the orders of the Council;

(d) setting up a mechanism for review of the quality of secretarial audit, enhancing the powers to the Council to fix fees, increase the term of the Council from three to four years, streamlining the election process and prescribing certain restrictions with regards to eligibility of members for contesting elections for the Council of the Institute.

6. The Bill seeks to achieve the above objects.

JASWANTSINGH.

Notes on Clauses

Clause 2 seeks to define various expressions used in the Bill.

Clause 3 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee of associate members of the Institute.

Clause 4 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee of fellow members of the Institute.

Clause 5 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee for certificate of practice. The clause also provides for cancellation of certificate of practice under the circumstances as may be prescribed by regulations.

Clause 6 seeks to provide for enhancing the total strength of the Council of the Institute from sixteen to twenty and also provides that the manner of election and nomination will be specified by rules. The clause also debars persons holding office of profit under Central Government or a State Government from contesting election to the Council.

Clause 7 seeks to provide that a member of the Council shall be eligible for re-election for a maximum of three consecutive terms. The clause debars sitting and former Presidents of the Council from contesting election of the Council. This clause also provides for settlement of election disputes and establishment of election tribunal.

Clause 8 seeks to provide for the continuation in office of the Vice-President till his successor takes charge, as is the case with the President of the Council.

Clause 9 seeks to change the period for not filling up a casual vacancy from six months to one year, prior to the date of expiration of the duration of the Council.

Clause 10 seeks to provide for enhancement of duration of the Council from three to four years.

Clause 11 seeks to provide that the Council shall fix allowances of office bearers of the Council and members of its Committees by previous sanction of the Government and also to provide that the Council shall approve foreign travel tours of the members of the Council and its Committees and staff of the Institute in accordance with rules framed by the Central Government for this purpose.

Clause 12 seeks to, *inter alia*, provide for increasing the strength of the Executive Committee and the Examination Committee.

Clause 13 seeks to provide that the Council, with the prior approval of the Central Government, may determine the annual membership fee of the Institute. The clause also provides that the list of members can be supplied to the members on payment of the prescribed amount.

Clause 14 seeks to provide that the Council may re-enter the name of the member of the Institute, if his name has been removed for non-payment of dues, on payment of such additional fee as may be determined by the Council with the prior approval of the Central Government.

Clause 15 seeks to, *inter alia*, provide for constitution of more than one Disciplinary Committee, appointment of a prosecution directorate and empowering them and the Appellate Authority to, summon and enforce the attendance of any person and examining him on oath, to discover and production of any document, and receive evidence on affidavit. The clause also provides for action to be taken by the Council on the Disciplinary Committee report and the penalties, which Council can impose on a member of the Institute.

Clause 17 seeks to, *inter alia*, provide that the Appellate Authority constituted under Chartered Accountants Act, 1949 shall be deemed to be Appellate Authority under this Act with some changes with the term of office of Chairperson and Members, their allowances and terms and conditions of service and resignation and removal of Chairperson and Members. It also provides for the procedures to be adopted by the authority and powers of the authority with regards to the orders passed by the Council.

Clause 18 seeks to, *inter alia*, provide for establishment of a Quality Review Board, its functions, procedures, the terms and conditions of service of Chairman and Members, which will review the quality of audit and other services provided by the members of the Institute.

Clause 20 seeks to, *inter alia*, empower the Central Government to issue such general or special directions, as it thinks fit, to the Council, making it obligatory on the part of the Council to comply with such directions. It also empowers the Central Government to dissolve the Council after giving an opportunity of being heard. The clause also seeks to make provision for protection of action taken in good faith.

Clause 21 seeks to confer upon the Central Government the power to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the various matters in respect of which such rules may be made.

Clause 22 seeks to provide for laying of the rules and regulations on the table of both the Houses of Parliament.

Clause 23 seeks to provide for substitution of a new Schedule for the existing two Schedules.

FINANCIAL MEMORANDUM

The Bill seeks to appoint a Prosecution Director, constitute an Appellate Authority and establish a Quality Review Board. The expenditure in this regard is to be borne by the Council of the Institute and there shall be no expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 3, 4, 5 and 13 of the Bill seek to amend sections 4, 5, 6 and 19 of the principal Act so as to empower the Council to determine the fee with the prior approval of the Central Government.

2. Clause 5 also seeks to amend section 6 of the principal Act so as to empower the Council to cancel the certificate of practice under the circumstances as may be prescribed by regulations.

3. Clause 6 of the Bill seeks to amend section 9 of the principal Act so as to empower the Central Government to specify by rules the manner of election and nomination of the members to the Council.

4. Clause 7 of the Bill seeks to insert a new section 10B so as to empower the Central Government to specify the terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, remuneration and allowances.

5. Clause 11 of the Bill seeks to amend section 16 of the principal Act so as to empower the Central Government to specify by rules the manner of approval of the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute.

6. Clause 13 of the Bill also seeks to amend section 19 of the principal Act so as to empower the Council to prescribe by regulation the amount a member is to pay for a copy of the list of members.

7. Clause 14 of the Bill seeks to amend section 20 of the principal Act so as to empower the Council to determine the additional fee for re-entering the name of a member with the prior approval of the Central Government.

8. Clause 15 of the Bill seeks to amend section 21 of the principal Act so as to empower the Central Government to specify by rules the procedure of inquiry and the period for submission of report by the Disciplinary Committee and the procedure of inquiry by the Prosecution Director.

9. Clause 16 of the Bill seeks to amend section 22 of the principal Act so as to empower the Central Government to specify by rules act or omission which may be determined as professional misconduct.

10. Clause 17 of the Bill seeks to add a new section after section 22 of the principal Act so as to empower the Central Government to specify by rules the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of payment of allowances by the Council and the procedure to be followed by the Authority in its meetings and in discharging its functions.

11. Clause 18 of the Bill seeks to insert a new Chapter after Chapter VII to the principal Act so as to empower the Central Government to specify by rules the procedure to be followed by the Board in its meeting and in discharging its functions and the terms and conditions of service of the Chairman and the members of the Board.

12. The matters in respect of which the said rules or regulations may be made are matters of procedure and administrative detail, and it is not practicable to provide them in the proposed legislation itself.

13. The delegation of legislative power is, therefore, of a normal character.

YOGENDRA NARAIN,
Secretary-General.